

A History of Medieval Political

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NEW INTRODUCTION

A HISTORY OF MEDIEVAL POLITICAL THOUGHT 300–1450



J O S E P H C A N N I N G

A HISTORY OF MEDIEVAL POLITICAL THOUGHT

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A HISTORY OF
MEDIEVAL
POLITICAL
THOUGHT

300–1450

Joseph Canning



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For Roberta

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PREFACE

The completion of this book marks the end of a long journey which I began, when, as an undergraduate at Cambridge, I attended the lectures and seminars of Walter Ullmann. I owe a considerable debt to him for inspiring me to study the political thought of the Middle Ages and for supervising me as his research student.

I should like to thank the University of Wales, Bangor, for two periods of study leave to finish this work, and its School of History and Welsh History for research grants. Without Ann Illsley's efficiency in obtaining inter-library loans, my task would have been much more difficult. I also wish to express my gratitude to the British Academy for financial support for necessary research. The resources of Cambridge University Library and the Warburg Institute have also been of very great assistance. I wish to record my gratitude to my original editor at Routledge, Janice Price, for her encouragement while this book was being written.

I should like to thank Professor Dr Otto Gerhard Oexle for inviting me for two research visits as a *Stipendiat* at the Max-Planck-Institut für Geschichte at Göttingen, a paradise for historical research. I should also like to thank my good friend there, Dieter Girgensohn, for arranging my original invitation: he and his wife Bettina helped make my stays extremely happy and fruitful.

I owe my greatest debt of gratitude to my wife, to whom this book is dedicated, for sustaining me throughout the time of preparation and writing, and to my children who put up with having an author as a father.

INTRODUCTION TO 2005 EDITION

Every book is itself an historical document. It is now a decade since I finished *A History of Medieval Political Thought, 300–1450*. In that time both my own ideas on the subject and scholarship have moved on. A new introduction to mark a reprinting seems timely. This gives me an opportunity to highlight scholarly contributions which have been published in these intervening years and also to clarify my thought concerning certain interpretations of medieval political thought.

MEDIEVAL ISLAMIC POLITICAL THOUGHT

One way in which the world has changed in the interim is in the new prominence accorded in the west to the study of Islam. Comparison between western and Islamic political thought in the Middle Ages is instructive. Such an approach was not within the scope of my book. To draw attention to this dimension could risk making this introduction itself appear dated when looked back on from a future perspective, as being the product of an immediate political concern in the first decade of the twenty-first century. But the present crisis has only served to draw attention to a long-term omission in the comparative history of ideas. In the last few years progress has been made in rectifying this deficiency. A helpful work in this respect is Antony Black, *The History of Islamic Political Thought: From the Prophet to the Present* (Edinburgh: Edinburgh University Press, 2001). There is a large and wide-open field of research in this area: the High Middle Ages were the golden age of Islamic culture and intellectual life. But there is a huge linguistic challenge involved. There is a marked shortage of scholars equipped with Latin, Greek and Arabic to make possible

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a deepened comparative study of western and Islamic political thought in the Middle Ages.

FEUDAL CONCEPTS

The debate continues about one of the basic conceptual tools for understanding the Middle Ages – feudal relations and the contentious term, feudalism. In my book, I did seek to indicate the conflicting approaches to this topic but was unable to give proper attention to a work which only became known to me in the final stages of writing. Susan Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford: Oxford University Press, 1994) elaborates a thesis relevant to medieval political thought: that concepts of fief and vassalage used by medieval historians were developed by sixteenth-century jurists interpreting the works of late medieval ones, the result being a mental construct divorced from reality.

JURISTIC WORKS

Jurists occupied a central place in the development of medieval political thought because of their concerns with government and rulership within systems of justice. My book reflected the importance of their works. The medieval jurists from the late eleventh century onwards made fundamental contributions to the two main aspects of political thought: the normative and evaluative side (as shown, for instance, in notions of the common good and justice), and also the empirical (as revealed in their application of the principles of law to their contemporary political reality). It is becoming increasingly clear that their nuanced development of the *de iure/de facto* argument is attaining classic status within political theory (see below, pp. 169–170).

In the preface to my book, I acknowledged my debt to Walter Ullmann and considered his interpretations in the body of the text. I think it might be helpful to clarify my position on Ullmann. He was certainly correct to stress the role of law and the jurists in medieval political thought. But his individual contribution should not be overstressed. He was part of a Germanic intellectual tradition of great strength which went back to figures like Otto Gierke. Max Weber also exerted an unacknowledged influence on his thought, notably as regards the formulation of

hierocratic terminology. In my book, my specific references to Ullmann were critical but in emphasising the central role of jurists I largely agreed with him. I mentioned his use of 'ascending' and 'descending' theses but have never used them myself. The latter, Ullmann's trade-mark, is too simplistic a tool for interpreting medieval political ideas and is a distinction which does not work in terms of the language of political theory. But it is a tool which one cannot deny has had an enormous influence in modern scholarly interpretations of the Middle Ages and in historiography, especially in America: it has been seductive because of its simplicity.

The amount of publications in the last decade devoted to medieval jurists, especially in canon law, has been considerable. Particular attention has been given to the civilian and canonist, Baldus de Ubaldis of Perugia (the subject of my original research). *Ius commune. Zeitschrift für Europäische Rechtsgeschichte* XXVII (2000) was entirely devoted to studies on Baldus to mark the six-hundredth anniversary of his death. Likewise, the papers given at an international congress held in his honour at his old university of Perugia in 2000 are shortly to be published. The study of his mentor and colleague, Bartolus of Sassoferrato, has been further enriched by Magnus Ryan, 'Bartolus of Sassoferrato and free cities', *Transactions of the Royal Historical Society*, 6th series, X (2000), 65–89. Constantine Fasolt in his *The Limits of History* (Chicago: The University of Chicago Press, 2004) has produced thought-provoking comparisons between late medieval and sixteenth-century juristic methods, an approach with important implications for the study of medieval political thought. The most useful bibliographical source for the study of medieval jurists is the online and constantly updated bibliography of the ongoing *History of Medieval Canon Law*, ed. Kenneth Pennington and Wilfried Hartmann, *Studies in Medieval and Early Modern Canon Law* (Baltimore: Catholic University of America Press).

THE IMPACT OF THE REDISCOVERY OF ARISTOTLE'S WORKS

A problem for understanding medieval political thought is how to assess the twelfth- and thirteenth-century rediscovery of Aristotelian ideas. I should like to clarify the approach which underlies my treatment in the book. The whole question has

proved contentious amongst modern scholars. There are two schools of thought. An older orthodoxy (represented by Ullmann, for instance) stressed the revolutionary impact of Aristotelian ideas, maintaining that they permitted the development of naturalistic conceptions of political man and the state. The rediscovery of the *Ethics* and the *Politics* was therefore seen as a watershed in political thought. An opposing interpretation minimizes the revolutionary aspect of the recovery of Aristotle, stressing continuity with previous philosophy and theology, and highlighting Cicero's works and Roman law as parallel sources of political and state concepts. It is observable that the works of Aristotle, like the Bible, could be and were dipped into eclectically by late medieval authors to support any form of government. But it also remains true (and the view I hold) that Aristotelian ideas provided a systematic model for the treatment of the natural order, including the state and political life. The way had already been prepared by rather inchoate and unworked-out treatments of a naturalistic and this-worldly dimension in twelfth- and thirteenth-century philosophy, theology, literature and jurisprudence. The *Ethics* and *Politics* provided political science with the authoritative texts which it had previously lacked. Before, it had to rely on legal texts; now it could be an autonomous scholastic discipline.

There is however a deeper problem in evaluating the impact of Aristotle. On one level the *Politics* and the *Ethics* could be approached in a purely philosophical way, that is to provide normative and evaluative solutions. In this manner, Aristotle became one more authority amongst many for supporting scholastic argument. But such a method did not much reflect political reality: this became increasingly the object of enquiry from the end of the thirteenth century. Indeed the fourteenth century witnessed the empirical shift in political thought, a fundamental change in focus with far-reaching implications. The rediscovery of Aristotelian political ideas did not produce this change in approach, but aspects of his ideas could be used as a language, side-by-side with juristic and Ciceronian ones, to express it. In the book I did stress the importance of the treatment of political reality in the period after c.1290, but it has become clearer to me that the change is more accurately expressed by characterizing previous medieval political thought as largely normative and evaluative, and by describing fourteenth- and fifteenth-century political thought as increasingly empirical. Issues concerning the

interface between political thought and reality are addressed in Joseph Canning and Otto Gerhard Oexle, *Political Thought and the Realities of Power/Politisches Denken und die Wirklichkeit der Macht im Mittelalter* (Göttingen: Vandenhoeck & Ruprecht, 1998).

Because the impact of Aristotle is such a wide-ranging and interpretative question it does not permit definitive solution. A useful contribution to the debate in recent years is Cary J. Nederman, *Medieval Aristotelianism and its Limits. Classical Traditions in Moral and Political Philosophy, 12th-15th Centuries* (Aldershot: Variorum, 1997).

THE COMMON GOOD

It is a truism to say that the notion of the common good was fundamental to medieval political thought. It is to be found as an assumption in all periods. Clearly, the analysis of the relationship between the common and the individual good became more sophisticated from the thirteenth century. The idea of the common good was a core part of the normative and evaluative aspect of medieval political thought. In so far as this concept became critically examined, contributions were made to political philosophy. But the common good was not the whole story. Questions of power were always present, especially so with the increasing emphasis on empirical interpretation in the late Middle Ages.

Matthew S. Kempshall, *The Common Good in Late Medieval Political Thought: Moral Goodness and Material Benefit* (Oxford: Clarendon Press, 1999) is a highly-detailed and massively informative study of theological and philosophical sources from the mid-thirteenth century to the early fourteenth but does not address what jurists had to say about the the subject. It is a contribution to the history of political philosophy. Kempshall maintains that the common good was the defining topic of late medieval political thought. My own view is that this exclusively normative and evaluative approach is too limited: it neglects the empirical and indeed historical aspects of political thought in this period. Such thought surely comes under the headings of both political philosophy (concerned with evaluation) and political theory, covering both normative and empirical questions (concerned with explanation).

NATURAL LAW AND NATURAL RIGHTS

An equally important aspect of medieval normative political thought is the area of natural law and natural rights. Great advances have been made in our knowledge of these questions in the last decade. The subject is one of enormous difficulty and relates, of course, to prime concerns in modern political philosophy. Medieval writers undeniably made important contributions to this debate. A whole range of medieval theological, philosophical and juristic sources are relevant. The preeminent recent study is Annabel S. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997). This discusses a wide range of theological, philosophical and juristic sources in the scholastic tradition ranging from the thirteenth to the seventeenth centuries. Over the years, Brian Tierney has put us all in his debt by his research into the canonist origins of notions of rights, culminating in his *The Idea of Natural Rights; Studies on Natural Rights, Natural Law and Church Law, 1150–1625* (Grand Rapids, Michigan : William B. Eerdmans, 1997).

THE POLITICAL IDEAS OF THE MEDIEVAL PAPACY

Notions of papal power constitute a central topic of medieval political thought. This is a question, deeply studied over so many years, where there is a challenge about moving the subject on. Much relevant to political thought can be found in two collections of papers given at conferences to mark the eighth-hundredth anniversary of the accession of Innocent III to the papacy (1198): John C. Moore (ed.), *Pope Innocent III and his World* (Aldershot, Brookfield, Singapore, Sydney: Ashgate, 1999) and Andrea Sommerlechner, *Innocenzo III. Urbs et orbis*, Istituto Storico Italiano per il Medio Evo, Nuovi Studi Storici, 55, 2 vols (Rome: Società Romana di Storia Patria, 2003). Of particular use is Jürgen Miethke, *De potestate papae. Die päpstliche Amtskompetenz im Widerstreit der politischen Theorie von Thomas von Aquin bis Wilhelm von Ockham* (Tübingen, 2000). This is an exhaustive survey of the sources for the conflicts concerning papal power from the late thirteenth to the mid-fourteenth century. It is extremely detailed and gives comprehensive treatment of the secondary literature.

INDIVIDUAL THINKERS

I draw attention to further work on the following thinkers.

Thomas Aquinas

From the books and articles which have been recently devoted to Aquinas, I would single out as an analysis of his contribution to political philosophy, John Finnis, *Aquinas: Moral, Political and Legal Theory* (Oxford: Clarendon Press, 1998). This approaches Aquinas not from a history of political thought view-point but seeks to explore the philosophical implications of his ideas concerning politics, law and ethics. I have presented my own further thoughts in my chapter on Aquinas in David Boucher and Paul Kenny (eds), *Political Thinkers from Socrates to the Present* (Oxford: Oxford University Press, 2003).

Marsilius of Padua

There is shortly to be a major addition to the literature on Marsilius' political thought: the publication of papers given at the International Medieval Congress at Leeds in 2003 and 2004, ed. Gerson Mareno Riano (Leiden: E.J. Brill, forthcoming 2005).

John Wyclif

I did not consider John Wyclif's (d. 1384) thought in my book. Recent research has enriched our understanding of his ideas. He was a radical theologian; what may be considered his political ideas were only a part of his thought. For a short general treatment see especially Stephen Lahey, 'Wyclif and Lollardy' in G.R. Evans (ed.), *The Medieval Theologians* (Oxford: Blackwell, 2001), pp. 334–54. For an detailed analysis centred on Wyclif's notion of *dominium* as ownership and jurisdiction see Stephen Lahey, *Philosophy and Politics in the Thought of John Wyclif*, Cambridge Studies in Medieval Life and Thought, 4th series, 54 (Cambridge: Cambridge University Press, 2003). See also the convenient collection: *Wyclif. Political Ideas and Practice. Papers by Michael Wilks*, selected and introduced by Anne Hudson (Oxford: Oxbow Books, 2000).

Christine de Pizan

I also did not mention Christine de Pizan (1365–1430) in my book. In the last decade or so, more scholarly attention has been accorded to her writings in terms of both gender history and political thought. See, for instance, Christine de Pizan, *The Book of the Body Politic*, ed. and trans. by Kate Langdon Forhan (Cambridge: Cambridge University Press, 1994). For secondary literature see Rosalind Brown-Grant, *Christine de Pizan and the Moral Defence of Women: Reading Beyond Gender* (Cambridge University Press, 1999); Kate Langdon Forhan, *The Political Theory of Christine de Pizan* (Aldershot: Ashgate, 2002).

**GENERAL HISTORY OF MEDIEVAL
POLITICAL THOUGHT**

There has been a major addition to general histories of ancient and pre-modern political thought: Janet Coleman, *Political Thought*, vol. 1: *From Ancient Greece to Early Christianity*; vol. 2: *From the Middle Ages to the Renaissance* (Oxford: Blackwell, 2000). The volume covering the Middle Ages includes particularly useful chapters on John of Paris, Marsilius of Padua and William of Ockham.

**ENGLISH TRANSLATIONS OF MEDIEVAL
POLITICAL THOUGHT TEXTS**

Several new translations of political thought texts have been recently published.

From late antiquity see Augustine, *The City of God Against the Pagans*, ed. and trans. R.W. Dyson, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1998).

Highly useful is the selection in Thomas Aquinas, *Political Writings*, ed. and trans. R. W. Dyson, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2002). But see also *On the Government of Rulers. De regimine principum. Ptolemy of Lucca with Portions attributed to Thomas Aquinas*, trans. James M. Blythe (Philadelphia: University of Pennsylvania Press, 1997) – although the overwhelming majority of modern

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scholars accept that Aquinas wrote up to Book 2, ch. 4 of this text (*De regno ad regem Cypri* (On Kingship for the King of Cyprus) also referred to as *De regimine principum*) and that the rest was written by Ptolemy of Lucca, Blythe considers the question of Aquinas' authorship to be open.

More translations of texts produced during the conflicts between King Philip IV of France and Pope Boniface VIII have also been published: *Quaestio de potestate papae (Rex pacificus)/ An Enquiry into the Power of the Pope*, ed. and trans. R.W. Dyson (Lewiston, N.Y.: Edwin Mellen Press, 1999); *Three Royalist Tracts, 1296–1302. Antequam essent clerici; Disputatio inter clericum et militem; Quaestio in utramque partem*, ed. and trans. R.W. Dyson (Bristol: University of Durham, Thoemmes Press, 1999).

Dante, *Monarchia*, trans. and ed. by Prue Shaw, Cambridge Medieval Classics, 4 (Cambridge: Cambridge University Press, 1995) provides a parallel Latin text and English translation.

Marsilius of Padua, *The Defender of the Peace*, trans. Annabel S. Brett, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, forthcoming 2005) is the first full-scale translation into English for more than fifty years.

William of Ockham, *On the Powers of Emperors and Popes*, ed. and trans. Annabel S. Brett (Bristol: University of Durham, Thoemmes Press, 1998) includes an introduction which is the best short survey available of Ockham's political ideas.

INTRODUCTION

This study seeks to interpret the history of the political ideas of medieval western, that is Latin, Europe and covers the period between the early fourth and the mid-fifteenth century. This starting-point, still within late antiquity, has been chosen because it marks the public acceptance and then dominance of Christianity, a development which was to provide the fundamental context for the political ideas of the Middle Ages proper. The concluding date is more problematical, because it can well be argued that the period from the thirteenth to the mid-seventeenth century forms a coherent whole in terms of political thought. The problem is that there is no clear end to the Middle Ages because of the diversity of cultural development in different parts of Europe and the survival of medieval ideas and attitudes well into the seventeenth century. It would, however, prove far too unwieldy to prolong this book to 1650 or thereabouts. A division in about the middle of the fifteenth century has been accepted because it reflects the effective end of the medieval papacy and the beginnings of early modern territorial monarchies, and because the development of Renaissance humanism increasingly created a new world of political discourse.

The first and fundamental problem, however, in treating medieval European political thought is to define clearly the nature of the subject. In this study a broad definition will be used: ideas concerning the nature, organisation, government and ends of society. This wide approach is dictated by the characteristics of medieval political thought and of the sources from which the historian may reconstruct it. The most obvious omission from this definition is any mention of the state, which would have to be included in any examination of post-medieval political ideas.

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The reason for this absence helps characterise a large part of the Middle Ages: although the term 'state', being in content historically fluid, can have medieval as distinct from a variety of modern connotations, it is difficult to see that it can be meaningfully employed to describe aspects of politically organised society in the medieval west before the twelfth century. The whole question of the state in the Middle Ages is, however, a very vexed one: there are, for instance, scholars who would locate an idea of the state in as early a period as the Carolingian. The disagreements hinge around the degree of rigour employed in the application of the term 'state' and illustrate a profound difficulty concerning the interpretation of western medieval political thought: so much of its content does not fit into modern preconceptions about what comprises political thought.

This difficulty is also apparent in the nature of the sources for this enquiry. Medieval political thought cannot be adequately treated by considering the works of a string of political thinkers: such writings were largely lacking in the Middle Ages, and in so far as they existed, were products only of the period from the twelfth century onwards. Most medieval writers relevant to this study were primarily theologians, philosophers or jurists: political ideas formed only a minor part of their concerns. The basic intellectual orientation of these thinkers must be borne in mind when interpreting them. Similarly, the works of publicists involved in the disputes between the papacy and secular rulers have to be understood within the context of each conflict and according to the intentions of the writer: such men were not professedly political thinkers. The importance of legal, and especially juristic, sources was paramount, and because of the role of the church, ecclesiological questions assumed a political significance which they would have lacked in a more secular age. Furthermore, throughout the medieval period, and certainly in its earlier part, a range of other kinds of source has to be considered: coronation orders, for instance, and histories. The sources of medieval political thought, therefore, consist both of writings directly or indirectly concerned with political matters, and other forms of material which permit the elucidation of political assumptions, attitudes and mentalities.

Such considerations lead the student of medieval political thought to treat it within its historical context. This method will be followed here, because the historical meaning of the whole

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range of medieval political ideas can only be discerned, when the sources, in all their variety, are viewed against the background of the societies, institutions, conflicts and intellectual *milieux* in which they were produced and with which they were concerned. This is in any case very much a historian's attitude, and of course it is perfectly possible to approach, where relevant, the sources of medieval political thought from a purely philosophical or jurisprudential stand-point. Differing kinds of meaning would thereby be gleaned from the material, but not that which was originally contained in the source, or which, in the case of a writer, he sought to express.

Given the nature of the sources to be considered and the method to be followed, it has seemed best to combine in this book a thematic with a chronological approach, thereby enabling the integrity of every historical stage to be preserved and the longer-term connections to be made. The focus is on the west; Byzantine political thought is only considered for purposes of comparison and in so far as it affected the west, because the Byzantine empire had a very different history: there the state endured as a continuation of the Roman empire of antiquity, and the position of the church in relation to the secular power increasingly diverged from that existing in the west, where ecclesiastical claims to independence developed to an extent unknown in the east. Although the church and secular rulers normally worked in harmony throughout the Middle Ages in the west, the opportunity for conflict was ever-present from the mid-eleventh century onwards, when the papacy substantially enlarged its jurisdictional claims. There was thereafter an underlying tension between secular and ecclesiastical power, which on occasion broke out into full-scale conflicts. The existence of such disputes in the west and their virtual absence in the more static east had the most profound long-term implications for the political ideas of both parts of Christendom. The conflicts between the church and secular power, reflecting the divided loyalties of those involved, provided so much of the dynamism of western medieval political thought, and prevented the emergence of the idea of a monolithic society. Writers engaged in these disputes radically disagreed about the ordering of society, its government and the public obligations of its members. Fundamental enquiries concerning the nature and purpose of rulership were exhaustively pursued precisely because of this disagreement. As a result, profound contributions were

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made to perennially important political questions, but contributions which were characteristically medieval in content. The modern enquirer into medieval political thought is first struck by the prominence of religious aspects; but, as we shall see, therein lies only part of the story.

LIST OF ABBREVIATIONS

Auth.	<i>Authentica ad Codicem</i>
C.	<i>Codex Iustinianus</i>
c.	<i>capitulum</i>
Clem.	<i>Clementinae constitutiones</i>
col.	<i>column</i>
Coll.	<i>Collationes Authentici</i>
Cons.	<i>Consilium</i>
Const.	<i>Constitutio</i>
D.	<i>Digesta Iustiniani</i>
Decr. Grat.	<i>Decretum Gratiani</i>
Dist	<i>Distinctio</i>
DM	<i>Marsilius of Padua, Defensor minor</i>
DP	<i>Marsilius of Padua, Defensor pacis</i>
Ep.	<i>Epistola</i>
Extrav. comm.	<i>Extravagantes communes</i>
Feud.	<i>Libri feudorum</i>
gl.	<i>glossa</i>
Inst.	<i>Institutiones Iustiniani</i>
l.	<i>lex</i>
MGH	<i>Monumenta Germaniae Historica</i>
Cap.	<i>Capitularia regum Francorum</i>
Conc.	<i>Concilia</i>
Const.	<i>Constitutiones</i>
DH II	<i>Heinrici II. diploma</i>
DO III	<i>Ottonis III. diploma</i>
Epp.	<i>Epistolae</i>
L de L	<i>Libelli de lite</i>
SS	<i>Scriptores</i>
Nov.	<i>Novellae Iustiniani</i>

LIST OF ABBREVIATIONS

<i>PL</i>	J.P. Migne, <i>Patrologia latina</i>
<i>Reg.</i>	<i>Registrum</i>
<i>Sext.</i>	<i>Liber sextus Decretalium Bonifacii P. VIII</i>
<i>ST</i>	Thomas Aquinas, <i>Summa Theologiae</i>
<i>X.</i>	<i>Decretales Gregorii P. IX seu Liber extra</i>

1

THE ORIGINS OF MEDIEVAL POLITICAL IDEAS, c. 300–c. 750

The political ideas of the ancient world largely conditioned the development of those of the Middle Ages. This process was, however, a highly complex one involving reinterpretation and innovation as these ideas were applied in the context of medieval conditions radically different from those which prevailed in ancient Greece, Rome or Israel. Antiquity provided so much of the intellectual raw material which was worked into peculiarly medieval structures of thought. Furthermore, the history of political ideas reflected the vicissitudes of the classical heritage in the medieval Latin west. In the early Middle Ages that inheritance was severely attenuated, whereas it was deeply enriched from the late eleventh century by the rediscovery of the whole of Justinian's codification of the Roman law, the *Corpus iuris civilis*,¹ and from the mid-twelfth by the growing body of Aristotelian works available in Latin translations. This is not to suggest, however, that the whole content of medieval political ideas rested on concepts derived from the ancient world. Some areas, such as, for instance, feudal notions, were specifically medieval developments. The rich texture of political ideas in the Middle Ages was provided by the way in which the medieval versions of ultimately Greco-Roman and biblical concepts coexisted and interacted with purely medieval modes of thinking. In the Byzantine empire the integration of classical and biblical ideas into a structure of political thought followed a path markedly different from that which the west pursued, but one which directly influenced the west in certain crucial phases.

The immediate foundations of early medieval political thought lay in the lengthy period of transition between the ancient world and the Middle Ages proper, that is to say between the reign of

the Emperor Constantine (306–37) and the early eighth century, which in the west saw the rise to power of the Carolingians and in the east the existence of a thoroughly Greek Byzantine empire. It is necessary to begin our enquiry with this period of transition because it produced ideas basic not only to the whole thought-structure of the early Middle Ages but ones which were pervasive throughout the medieval period. A complete survey of intellectual life in these transitional centuries will not be attempted here: only those aspects important for the Middle Ages will be considered.

This period witnessed the conversion of Constantine, his foundation of Constantinople as the first predominantly Christian city and the reception of Christianity as the official religion of the Roman empire in 380; thus was provided the Christian context fundamental to the development of political ideas in the Middle Ages. In the west, Roman life became gradually barbarised with the settlement of Germanic peoples within the frontiers of the empire. With the gradual collapse of Roman administration as barbarian kingdoms emerged in the fifth and sixth centuries, regionalism developed leading ultimately to territorial kingship which became the characteristically medieval form of rulership. Yet within these kingdoms, notably in Gaul, Spain and Italy, increasingly diluted elements of Roman civilisation persisted into the seventh century. In the east, the Roman empire survived and became more and more Greek in outlook. Although the bases of Byzantine political thought had already been laid down in the fourth century, when the Roman empire remained intact, the eastern empire – despite its continuing universalist claims – had by the second half of the seventh century become clearly Byzantine, possessing control over only a part even of the original eastern portion of the empire: despite the attempted reconquests of Justinian the west had been lost apart from a remnant of power in Italy, and the advance of Islam in the seventh century had conquered Syria, Palestine and North Africa. Indeed it was the seventh century which really marked the end of antiquity and the beginning of the Middle Ages. The west in reality was left to its own resources; its regionalism crystallised into kingdoms: the Visigothic in Spain, the Frankish in Gaul, the Lombard in Italy and the Anglo-Saxon and Celtic ones in the British Isles. Byzantium, despite its grandiloquent universalist claims, turned inwards into its Greek culture and destiny. Much of the future lay

with Islam which through its conquests largely destroyed what remained of the unity of Mediterranean civilisation. By 713 Islam had conquered the Visigothic kingdom, and by 720 Septimania in southern France, although its control there proved to be only short lived. Indeed, in 732/3 the Frankish leader Charles Martel halted any further Moslem advance northwards in a battle which took place at Tours or Poitiers. In a western Latin Europe limited, in effect, to Gaul, parts of western Germany, Italy and the British Isles, the stage was set for the Carolingian Renaissance, the flowering of a purely medieval western culture, in which were elaborated concepts of rulership which remained fundamental for the rest of the Middle Ages.

BYZANTIUM: THE CHRISTIAN EMPIRE

The conversion of Constantine, and Christianity's later status as the official religion of the Roman empire, produced in the long term a radical change in Christian attitudes to political life and the state. It was, however, a development which came about gradually: the immediate effects of Constantine's conversion itself can be exaggerated. Previously, there had been a range of Christian reactions to the Roman state. At one pole there existed negative alienation reinforced by sporadic persecutions largely caused by Christian unwillingness to participate in the pagan cult of the divinity of the emperor. A form of indifferentism resulting in political quietism was also prevalent. Following Christ's words, 'My kingdom is not of this world',² Christians considered this life but a passing preparation for the next, where in heaven they would find their true home. Amongst Christians, there was also a more positive attitude recognising the necessity of the Roman state and indeed its divinely sanctioned existence which justly claimed their submission in all that was not sin: 'Render unto Caesar the things that are Caesar's and to God the things that are God's'.³ This message was supported by the words of St Peter, 'Fear God, and honour the emperor',⁴ and of St Paul,

You must all obey the governing authorities. Since all government comes from God, the civil authorities were appointed by God, and so anyone who resists authority is rebelling against God's decision, and such an act is bound to be punished.⁵

Indeed many Christians in the third century served the Roman state as soldiers. The transformed public position of Christianity in the fourth century did not result in the disappearance of the negative and indifferentist attitudes: these coexisted in tension with wholehearted Christian acceptance of the validity of the state. The change which did occur was a fundamental one: Christian theory of government and rulership was developed to accommodate an imperial power which was itself Christian. The results were of the greatest long-term significance, because from this point onwards into the Middle Ages there grew a theory and practice of government understood and justified in Christian terms. In itself Christianity advocated no particular form of government, but because the church was confronted with monarchy as the only form of rule existing in late antiquity and the early Middle Ages, Christian political thought emerged as monarchical.

The fundamental structure of Byzantine political thought was established in essence during the reign of Constantine himself, and remained largely unchanged throughout the existence of the empire. The father of this theory was Eusebius of Caesarea (263–339) whose interpretation of the significance of Constantine's reign exerted the widest influence. Eusebius believed that Constantine's establishment of the Christian empire marked a crucial turning-point in human history, nothing less than the fulfilment of God's promise to Abraham. This view interpreted Roman history as being determined by divine providence: that the empire was founded under Augustus, in whose reign Christ was born, in order to facilitate the spread of the Christian religion, a development culminating in the conversion of the emperor himself.

Eusebius also adapted Hellenistic ideas of kingship which by the third century had markedly influenced the development of Roman concepts of emperorship. According to Hellenistic theory the ruler was the image of God and his vicegerent on earth ruling a kingdom which was an imitation (*mimesis*) of that of heaven. Under the influence of Neoplatonic ideas the kingdom could thus be seen as a microcosm reflecting the order of the macrocosm of the universe itself. The ruler was understood as being himself divine: the Roman emperor was indeed 'lord and God' (*dominus et deus*). Eusebius, following the intention of Constantine, was able with ease to Christianise this pagan view. All that was necessary was to claim not a form of divinity for the emperor, but simply

divine appointment confirmed by Constantine's closeness to God as shown by the special revelations to him and his military success. Thus the emperor was God's human vicegerent on earth ruling over an empire which was the reflection of the kingdom of heaven. Monotheism infused this cosmic order: just as there was one God in the universe there was one emperor (*Basileus*) in this world.

In relief at the end of recent severe persecution the bulk of the Christian church, like Eusebius, was only too willing to accept Constantine's close supervision of ecclesiastical matters. Constantine took it upon himself to summon ecclesiastical councils. Shortly after the decree of toleration known as the Edict of Milan (313) he called the Council of Arles in 314 to attempt to resolve the Donatist question;⁶ in 325 he convoked the first ecumenical council itself at Nicaea. Constantine had brought the Christian church within the structure of the Roman state and thereby subjected it to his authority. He claimed jurisdiction over all the external aspects of Christianity, that is to say ecclesiastical organisation and administration, whereas bishops, he accepted, had authority over purely spiritual matters, such as the formulation of doctrine and the administration of sacraments. He also considered that as emperor he had religious responsibility for the pagans in his empire: thus the *Vita Constantini* (Life of Constantine) records that in a dinner speech given to the fathers of the Council of Nicaea he described himself as 'bishop of those without [i.e. pagans]' (*episkopos ton ektos*).⁷ In Christian terms Constantine was not a bishop or priest in any sacramental sense, although he was accorded liturgical honours not given to any other layman. When he died, as a mark of special reverence he was declared a Christian saint, the equal of the apostles (*isapostolos*): so much had he done for his adopted religion.

After the death of Constantine, apart from the interlude of the Emperor Julian's (361-3) brief favouring of paganism, the view which understood the Roman empire as a Christian one gained in strength. The culmination of this process was the decree, *Cunctos populos*, whereby in 380 the emperors Valentinian II and Theodosius I made Catholic Christianity the official religion of the empire. From now on paganism went into further decline and the equation between Roman and Christian was consolidated.

From the point of view of the history of political ideas, the classic expression of Christian Roman emperors is found in the *Corpus iuris civilis*. This was begun at Justinian's command

in 527 and completed in 534 by a committee chaired by Tribonian. The codification consisted of three main parts. The largest was the *Digest* (or *Pandects*), divided into fifty books and comprising selections from thirty-nine classical jurists ranging from the second to the fourth centuries. A short introductory textbook for students, the *Institutes* (in four books), was added. The third part was the *Code* in twelve books containing imperial constitutions including many by Justinian himself. By the act of codification, the emperor made all parts of this *Corpus iuris* his law deriving efficacy from his will and thus possessing equal validity. The language of this compilation was Latin: there were very few Greek passages. Justinian forbade any commentaries on his codification but found he had to supplement it by issuing further constitutions, known as *Novels*, until his death in 565. These were mainly written in Greek, and in c. 580 a collection of 168 of them was made for general use. In the medieval west the *Novels* became known in two versions: the *Epitome Iuliani*, a Latin abridgement of 124 constitutions, and the *Authenticum* comprising 134 in either the original Latin or a translation from the Greek. By the twelfth century the *Authenticum* was considered part of the *Corpus iuris* as a whole.

The *Corpus iuris* contains the fundamental Roman law distinction between public and private law (*ius publicum* and *ius privatum*). The vast bulk of the compilation is private law. Its public law content, which is directly related to matters of politics and government, although it is restricted in extent and unsystematically presented, contains statements of enduring importance for political thought. There are, however, major problems of interpretation. Because of the speed of codification there are contradictions resulting from the diversity of the sources consulted. Thus, for instance, statements produced under the principate exist side by side with laws reflecting conditions under the dominate and Byzantine emperorship. Yet all laws in the *Corpus iuris* are accorded equal weight by the will of Justinian. The historian has to consider what each text meant when it was originally produced, how it was understood in the sixth century and what it was thought to signify in later periods of European history. Although the overall tenor of the *Corpus iuris* reflects a monarchical form of government, it also contains material echoing constitutional and legal ideas deriving ultimately from republican Rome: this is notably the case in the *Digest* and

Institutes. Because of such inconsistencies and irreconcilable elements in the text, it thus proved possible in the late Middle Ages to ransack the *Corpus iuris* for statements to support theories of both monarchy and government by the people. Furthermore the opening titles of the *Digest*, especially, contain principles of general relevance to any system of law or government. The destiny of the *Corpus iuris* was to serve as a vast treasure-house of legal and political ideas for medieval and early modern Europe.

However, its influence in the west was long delayed until the revival of scientific jurisprudence at the university of Bologna from the end of the eleventh century and the beginning of the twelfth. Before that period in the west, some Roman law was known primarily through the barbarian codes, the *Lex Romana Visigothorum* and the *Lex Romana Burgundionum*. In the east, the influence of the *Corpus iuris* was also problematic. Because of the decline in the knowledge of Latin, Greek translations and commentaries were produced. In c. 741⁸ a short official summary of the law based on the *Corpus iuris* and the novels of subsequent emperors was produced by the emperors Leo III and Constantine V: this was known as the *Ecloga Isauriorum*. The great Greek version of the *Corpus iuris* known as the *Basilica* was issued by Leo VI (886–912) continuing the work of his father, Basil I. The original text of the *Corpus iuris* retained legal effect, although by the twelfth century Justinian's legislation was known to all intents and purposes only through the medium of the *Basilica*, a development culminating in the decision made by the imperial Court of Justice in 1169 whereby a law included in the *Corpus iuris* but not the *Basilica* was held to be invalid.

The dominant political message of the *Corpus iuris* is a theocratic one. The emperor derives his power from God: in the constitution *Deo auctore* at the beginning of the *Digest* Justinian describes himself as 'at God's command governing our empire, which has been entrusted to us by heavenly majesty'.⁹ The divine source of imperial authority is constantly reiterated in the *Code* and *Novels*. 'At divine command we took up the imperial insignia.'¹⁰ The emperor's laws are sacred (*sacrae* or *sacratissimae*),¹¹ thus reflecting the Christianising of his pagan role as *pontifex maximus*. They are, furthermore, of everlasting effect: Justinian decreed that his codification was to be valid 'forever' (*in omne aevum*).¹² His divine office is a universal one: he is 'lord of the world' (*dominus mundi*).¹³ It is, therefore, his will alone which

constitutes law: 'what has pleased the *princeps* has the force of law' (*quod principi placuit legis habet vigorem*).¹⁴ He is thus no less than the 'living law' (*lex animata*), an application of the Hellenistic concept of the ruler as *nomos empsychos*: 'Let the imperial rank be exempted from all our provisions [in this constitution], because God has subjected the laws themselves to the emperor, by sending him as a living law to men.'¹⁵ He is in short not bound by the law, but 'freed from the laws' (*legibus solutus*).¹⁶ This famous phrase indicates that the emperor is above human law: he is not subjected to the laws which derive from his own universal authority. This formulation laid the foundation for the elaboration of the concept of absolute power in the late Middle Ages.¹⁷

On the other hand there are also in the *Corpus iuris* statements which indicate the possession of authority by the Roman people. The historical outline of Roman law in D.1.2.2 includes a brief sketch of the republican period, and republican sources of law are treated in D.1.1.7 and Inst. 1.2, 3–5. The most fundamental question however concerns the origin of the imperial power itself: reference is made to the so-called *lex regia* or 'royal law', whereby the Roman people transferred its power and authority to the emperor. The meaning of these references to the *lex regia* has been hotly debated by historians. One school of thought has seen it as an *ex post facto* legal construction to justify the transition from the republic to the empire. Such a law in fact never existed, but was postulated by later classical jurists to explain the transfer of sovereignty from the Roman people to the first *princeps*, Augustus, a device, in short, to legitimise the imperial power.¹⁸ The other view identifies the *lex regia* with the *leges de imperio* by which the popular assembly gave power to each emperor at the beginning of his reign.¹⁹ Justinian himself clearly considered that the *lex regia* established the empire: 'By an ancient law (*lege antiqua*) which was called "royal", all the authority and all the power of the Roman people were transferred to the power of the emperor.'²⁰ For Ulpian, what has pleased the *princeps* has the force of law, 'since by the royal law, which was passed concerning his imperial authority, the people confers on him all its authority and power',²¹ a statement which can be understood to refer either to an original *lex regia* or to a *lex de imperio*. The problem with this interpretation is that only one such *lex de imperio* survives: that for Vespasian. In the form in which we have it, only part of the text remains and does not conform with the description of the *lex regia*: it is not a general

transfer of power but confers specific powers and exemptions. It is pure speculation to consider that the missing first part would have contained such a general transfer; the existence of other *leges de imperio* is also hypothetical. The most likely interpretation is that the *lex regia* was indeed a later and classical juristic construction adopted by Justinian as having been genuinely enacted as a law. The name *lex regia* is itself strange. The nomenclature 'royal' would be at home in a Byzantine context but utterly alien to that of the principate. It has been suggested that the word is a Byzantine interpolation into Ulpian's text; Theodor Mommsen considered it more likely that it reflected the jurist's Syrian background.²²

Whatever the truth about the *lex regia*, its significance for political thought was that it expressed the idea that the emperor's power derived from the people, and thus provided a model for the popular source of governmental power to be elaborated later in the Middle Ages and the early modern period. The *lex regia* raised a fundamental problem concerning the origins of authority, because its inclusion in the *Corpus iuris* meant that both divine and popular sources of rulership coexisted. These two sources could be seen as being mutually exclusive, and the *Corpus iuris* itself does nothing to solve this problem. At the time of Justinian the conception of the divine origin of imperial power overwhelmed any idea that the people was in any meaningful sense the source of authority; the only echo of such an ultimately republican idea was to be found in the acclamation of a new emperor by the senate, army and people. Such acclamation either sufficed as a form of election after the death of an emperor or, as was more normal in Byzantine history, confirmed the already co-opted choice of the previous incumbent. Either way, popular acclamation only served to declare the divine choice of emperor whose power came from God directly. With the revival of Roman law studies in the high Middle Ages the mutual implications of the two sources of authority were to be more thoroughly explored together with the question of whether the *lex regia* had been revocable or irrevocable.

The question of the people's authority also arises in the treatment of customary law in the *Corpus iuris*. This was a relatively unimportant area in Justinian's time but one which was to be crucial for the Middle Ages. In its general classification of custom, Roman law, following Greek terminology, was not profound, describing it as *ius non scriptum* (unwritten law) as opposed to

ius scriptum (written law) – a superficial distinction based on outward form. There is, however, in the *Digest*, one passage which goes to the heart of the matter by isolating the will of the people as the constitutive element in custom. It considers that the popular will makes both written laws (*leges*) and custom, and therefore holds that custom can abrogate a *lex*:

What does it matter whether the people declares its will by a vote or by its actions? It is, therefore, most correctly accepted that laws are abrogated not only by the vote of the legislator, but also by the tacit consent of all through disuse.²³

This was written by the second-century jurist, Julian, and reflects the survival of republican ideas into the principate. A constitution of Constantine, however, directly contradicts this text by maintaining that a custom cannot abrogate a *lex*, a sign of the diminished importance of custom by the fourth century.²⁴ There is thus no suggestion in the *Corpus iuris* that custom can revoke imperial law: indeed, Justinian maintains that the emperor, being through his will the sole source of law, is also its unique interpreter.²⁵ When in the late Middle Ages juristic theories of the authority of the people were developed, however, this passage from Julian through its understanding of the power of consent provided ammunition for the elaboration of theories of the autonomy, and indeed sovereignty of the people.

The *Corpus iuris* can thus appear ambiguous about the ultimate source of legal and political authority. Although in the sixth century it was meant to be the comprehensive enactment of a divinely appointed emperor, it provided sufficient material for later medieval and early modern theories both of monarchy and of government by the people. It was especially possible for such later jurists and political thinkers to take passages out of context. A notorious example is the statement, 'what touches all should be approved by all' (*quod omnes tangit, ab omnibus comprobetur*).²⁶ This occurs in a constitution of Justinian concerning the relationship between guardian and ward, and means that where there are several guardians of the one ward, certain acts require the agreement of all the guardians, because their interests are at stake. Clearly this law has nothing to do with political matters. Nevertheless, medieval jurists employed this famous dictum in a political sense as part of the development of theories of consent.²⁷

There might also appear to be ambiguity about whether the emperor was limited by law. As regards positive law – that is, human enacted law – there were statements which tended to modify the starkness of the claim that the emperor was *legibus solutus*. Although the *Corpus iuris* derived its legal force from Justinian's will, the imperial power existed within the context of the body of the Roman law itself. The Roman tradition of government was essentially a legal one, and Justinian's motivation in codifying classical juristic opinion and imperial decrees was born out of reverence for the law and a desire to preserve and revivify it. Precisely because the emperor's power was derived from the law (in the form of the *lex regia*) it was thought fitting that he should obey the laws.²⁸ There was however no obligation on him to do so and thus ultimately his freedom was preserved: obedience to the laws would be purely voluntary on his part.

At the beginning of the *Digest* and the *Institutes* the discussion of general jurisprudential principles goes beyond questions of positive law. Distinctions are drawn between *ius civile*, the provisions of a particular legal system such as the Roman; natural law (*ius naturale*); and the law common to all peoples (*ius gentium*). The treatment of the relationship between natural law and the *ius gentium* is contradictory. Ulpian considers natural law to be that which mankind shares with the animals, and to cover mating and the procreation and education of children: it is therefore different from the *ius gentium* which concerns only human beings.²⁹ Gaius, however, connects both laws by presenting the *ius gentium* as the product of natural reason (*naturalis ratio*): this view appears to have been the general opinion among Roman jurists.³⁰ Indeed Inst. 1.2, 11 maintains that, 'Natural law, which is uniformly observed by all peoples, was established by a kind of divine providence and remains always constant and unchanging.'³¹ Yet elsewhere the Stoic idea of the original natural liberty of mankind is contrasted with the introduction of slavery by the *ius gentium*.³² Clearly, the treatment of the natural law and the *ius gentium* is incoherent and sparse; but the few statements dealing with them enjoyed an enormous influence in the Middle Ages simply because they were included in the *Corpus iuris*. From the twelfth century onwards the discrepancy between the approaches of Ulpian and Gaius was to provoke among jurists fundamental discussion which explored the meaning of nature itself, and thereby involved profound implications for their theories of government and society. The

crucial point is, however, that the *Corpus iuris* presented positive law as existing within a normative context, thus providing at least some of the seeds of full-blown medieval natural law theories. There was nevertheless a fundamental difference of approach. The *Corpus iuris* did not maintain that positive law contrary to natural law was in any sense invalid: as Ulpian says, 'The civil law is that which neither wholly departs from the law of nature or peoples, nor follows it in everything.'³³ The emperor was certainly not considered to be obliged to obey natural law. Later in the Middle Ages, in contrast, jurists commenting on the Roman law contributed to the theory that positive law and governmental measures contrary to the natural law and the *ius gentium* were invalid: the relevant passages were thus woven into a theory going far beyond anything contained in the *Corpus iuris* itself.

As regards the emperor's relationship with the Christian church the *Corpus iuris* gives a great deal of information, which, however, must be seen in a wider context for its correct evaluation. This relationship, despite its central importance for Byzantine political and religious life, remained somewhat ill-defined. To try and understand it an interpretative distinction needs to be drawn between two meanings of the term 'church'. The empire itself (the *Basileia*), being Christian, was understood as the church in the wider sense of the body of Christians; of this body the emperor, as God's vicegerent, was the head on earth. It was not possible for Byzantines to conceive of the empire without the church and *vice versa*. In a narrower sense, however, the church was understood to be an ecclesiastical body with a sacerdotal hierarchy. The problems arose concerning the emperor's relations with this institution.

In the preface to Nov. 6, Justinian sets out the relationship between the emperor and the clergy. A distinction is made between the emperorship (*imperium*) and the priesthood (*sacerdotium*). Both derive directly from God:

Amongst men God's greatest gifts, conferred by his mercy from on high, are the priesthood and the emperorship. The former's ministry is in divine matters; the latter presides over and cares for human ones. Both, deriving from one and the same origin, regulate human life.³⁴

The emperor's main responsibility (*sollicitudo*), he continues, is to preserve true Christian doctrine and the integrity of the clergy. With these aims attained, the state (*respublica*) will be correctly

governed, due harmony (*consonantia*) achieved, and God's favour obtained through the prayers of a faithful priesthood.³⁵ The moral and doctrinal well-being of the clergy is essential for the health of the Christian empire, and thus demands imperial supervision.

This imperial role was expressed in permanent form by the legislation of Justinian and his predecessors. The first thirteen titles of the *Code* were concerned with the clergy and religious questions, as were many of the *Novels*. The emperor's capability to legislate in this way was a Christian application of the traditional Roman view that public law included matters relating to religion and the priesthood, which were thus perceived as the concern of the state.³⁶ Although Justinian preserved the crucial distinction between the *imperium* and the *sacerdotium*, he also maintained that there was not much difference between them. This view, which was formulated with ecclesiastical property specifically in mind, expressly reflected the public status of the clergy in a Christian empire.³⁷ In essence Justinian's position represented the long-standing Byzantine compromise between the imperial and priestly powers. Emperors had indeed called church councils, presided over them and participated in their discussions. Yet the authoritative formulation of doctrine remained the concern of the *sacerdotium*. Nevertheless, Justinian, in launching his anti-Nestorian attack against the Three Chapters without first convoking a church council, provoked the accusation of undue interference in ecclesiastical matters, and then had to call the Fifth Ecumenical Council which proceeded to endorse his views. The accepted role of the emperor was to make canons issued by the church and synodal decrees into laws of the empire. Thus Justinian reiterated that the canons of the four ecumenical councils be considered to be imperial *leges*.³⁸ Furthermore, as a professed example of the desired *consonantia* between imperial and ecclesiastical authority, he gave legal effect to the deposition of Patriarch Anthimus by a synod chaired by Pope Agapetus and the new patriarch, Menas.³⁹ Similarly, the emperors since Constantine had permitted both secular and clerical suitors to bring cases before the bishops' courts, and Justinian confirmed that only church judges could deal with purely ecclesiastical matters.

Justinian certainly exercised very considerable power over ecclesiastical affairs and was personally extremely interested in theology. It used to be conventional to describe the image of the emperor in the *Corpus iuris* as Caesaropapist, indicating thereby

that he possessed divinely instituted supreme power within a unified entity of church and empire.⁴⁰ More recent scholarship has questioned the aptness of the term 'Caesaropapism' in the Byzantine context.⁴¹ Although the emperor was commonly called 'priest and emperor' (*hierous kai basileus*),⁴² he remained a layman throughout the Byzantine period. He was not a priest in that he did not possess the sacramental power of orders: he had not been ordained. He was only a priest in the sense of possessing jurisdictional powers in ecclesiastical matters.⁴³ Although the emperor was the head of the church understood as the empire, he was definitely not the head of the church conceived as an ecclesiastical body. Justinian accepted the primacy of the pope and the second place of the patriarch of Constantinople.⁴⁴ Whatever the vicissitudes in the long historical relationship between Constantinople and the papacy, the head of the church at Constantinople was recognised to be the patriarch. Normally there was harmony between church and emperor, in the interests of which the clergy would practice 'economy' (*oikonomia*) involving the avoidance of disputes on relatively unimportant matters. Nevertheless, when a major clash could not be avoided the clergy adhered to its claim to be the interpreter of doctrine. Thus in the eighth and ninth centuries, although the church was divided over iconoclasm, the anti-iconoclastic party among the clergy was able in the end successfully to resist those emperors who wished to forbid the veneration of icons and religious images. It even happened that a patriarch excommunicated an emperor, as Nicholas Mysticus did Leo VI because of his fourth marriage. Furthermore, from 491 the patriarch received the confession of faith of the newly appointed emperor. Canon law existed side by side with secular law (*nomos*) and the church in interpreting and augmenting the canons, provided the spiritual and moral context within which the emperor ruled. Since the relationship between the two kinds of law, in so far as both concerned religious matters, was ill-defined, collections setting out parallel texts of first the ecclesiastical and then the relevant secular law were developed and known as *nomocanones*, of which the most well known was the seventh-century one in fourteen titles. These compilations facilitated considerable independence on the part of the patriarch and his synod in the interpretation of the law. A development of this trend is found in the ninth-century *Epanagoge* of Basil I, in which,

under the influence of Patriarch Photius, the freedom of the church is stressed.

Yet the power of the patriarch of Constantinople should not be exaggerated. His coronation of the emperor, which first occurred in 457, was in no sense constitutive but purely part of the declaration of the divine choice. Indeed, initially the patriarch acted as representative of the Roman people; it was only gradually that the coronation became more ecclesiastical in character. As a guarantee of orthodoxy a coronation oath to uphold the faith and the position of the church can be discerned in the ninth century. The purely ecclesiastical rite of anointing was only introduced into the inauguration ritual in the twelfth century. Furthermore, the procedure for creating the patriarch himself was subject to considerable imperial control beneath the appearance of preserving ecclesiastical freedom. Three candidates were canonically elected by synod. It was then the emperor's prerogative to choose one of these three. If he did not favour any of them, he could then nominate a man of his own choice, in whose appointment the synod would have to acquiesce. Likewise, emperors forced at least 36 of the 122 patriarchs elected between 379 and 1451 to resign or be deposed.⁴⁵ Most telling of all were the traditional words which made it clear that the emperor instituted a patriarch at the latter's consecration by divine grace and the imperial power proceeding therefrom.

Although the structure of Byzantine political thought was largely fixed from the time of Constantine and Eusebius there were clearly some developments in it, as the increasingly ecclesiastical aspect of imperial consecration shows. Similarly the legislation of Leo VI, through depriving the senate and *curiae* of their little remaining authority, and also confirming the trend since Justinian whereby the consulate was reserved to the emperor, consolidated the imperial monarchy by removing these purely theoretical vestiges of republican institutions. Nevertheless, it has been justifiable to concentrate here on the *Corpus iuris* which, containing the expression of Byzantine political ideas in permanent legal form, was the prime means of transmission of these to the high and late Middle Ages. As we shall see, however, the influence of Byzantine forms of rulership was also important in the early medieval west: the emperor provided the model of the Christian ruler both as legislator and monarch of a universal empire.

THE WEST

Christian kingship

During the gradual disintegration of the Roman empire in the west the most widespread form of rulership which emerged was Christian kingship. The long-term historical significance of this development can hardly be exaggerated because it laid the foundations of the theory of monarchy which survived into modern times.

In the fourth and fifth centuries the earlier Roman suspicion of kingship had become eroded under the influence first of Hellenistic and then of Christian ideas. The Bible provided the images both of kingship in Israel and of Christ the King.⁴⁶ In the west it became common to refer to the empire as a kingdom (*regnum*) and the emperor as king (*rex*), whereas in the east the emperor's title *Basileus* simply meant 'king'. This change facilitated the development of a Roman-Christian form of kingship in the barbarian kingdoms.

The nature of barbarian kingship after entry into the Roman empire has provoked intense debate among modern scholars. The centre of the problem concerns the question of Germanic kingship. In the nineteenth century German historians produced a theory which maintained that the Germanic tribes had a form of rulership based on popular election, and, furthermore, that this kind of popular kingship persisted as a fundamental element in barbarian and early medieval monarchy in the west. Such rulership, because it derived from the people, was, therefore, limited and answerable to a popular assembly. Indeed, within the German tradition of historical writing the theme of Germanic kingship has provided a model for the interpretation of the political conceptions of the Middle Ages. One has only to look at the seminal studies of Otto Gierke, Fritz Kern and Walter Ullmann to find this.⁴⁷ Yet there is a growing opinion in recent scholarship that this whole great intellectual structure of Germanic kingship is a myth. There is very little evidence indeed for the nature of Germanic kingship before entry into the Roman empire. Such evidence as there is derives from non-Germanic sources, notably Caesar, Tacitus' *Germania* and Ammianus Marcellinus. Enormous and misplaced scholarly industry has been devoted to trying to elucidate the meaning of the few relevant phrases in these works.

Thus for instance we cannot be sure of what Tacitus meant in his famous statement that the Germans 'choose kings for their nobility, and war-commanders for their valor'.⁴⁸ Furthermore, it is methodologically unsound to generalise about supposedly common 'Germanic' features in the rulership of tribes diverse in kind, space and time.⁴⁹

The form of kingship which in fact emerged in the post-entry barbarian kingdoms was overwhelmingly Roman and Christian in character and stressed the power and authority of the monarch. Initially Roman influence was strong and direct, reflecting the way in which barbarian kingship was assimilated into the decaying Roman governmental system. These kings ruled largely with the co-operation of the surviving Roman senatorial class, and certain of them accepted imperial legitimisation of their rule through receiving Roman offices. Thus in fifth-century Italy, for instance, the Ostrogoth, Odovacer, ruled with imperial sanction and his successor, Theoderic, gained the Emperor Anastasius' recognition of his kingship in 497. Likewise in Francia the emperor conferred on Clovis in 508 an honorary consulate and permitted him to wear regalia. According to Gregory of Tours Clovis thereafter employed the title 'consul or Augustus' (*consul aut augustus*).⁵⁰ A turning-point came, however, with Justinian's Gothic War to reconquer the west (535–55): thereafter it seems that no western kings sought imperial confirmation of their rule. The west increasingly went its own way.

In the barbarian kingdoms God was understood to be the ultimate source of royal authority. This notion, which was widely prevalent in the sixth century, became focused into the formula that such a ruler was 'king by the grace of God' (*rex dei gratia*) – that he ruled by God's favour. This formulation became fundamental to medieval conceptions of kingship and was the distant ancestor of early modern divine right monarchy. The earliest known use of the formula itself in the west apparently dates from the reign of the Lombard king, Agilulf (590–616); Isidore of Seville also applied it to the Visigothic king, Svinthila (621–31); by the end of the seventh century the Anglo-Saxon kings were employing it or similar titles; and in the second half of the eighth century it became part of Charlemagne's royal title.⁵¹ The idea of kingship by divine favour was, however, older than the formula itself and can be discerned as early as the reign of the Vandal king, Huniric

(d. 484).⁵² In the east the idea that the emperor ruled by God's grace had been prevalent from the fifth century, but appears not to have been the source of the western concept.

The origins of the idea of kingship by divine grace lay in interpretations of the Bible. Certain texts in the New Testament were directly relevant. Two in particular had a general application to the relationship between God and the individual Christian, but were applied in this context specifically to that between God and the king: 'By God's grace this is what I am' (1 Corinthians 15:10),⁵³ and 'A man can lay claim only to what is given him from heaven' (John 3:27).⁵⁴ Two other texts applied overtly to governmental and jurisdictional power: as we have seen, Romans 13:1 stated that all government came from God, and in John 19:11 Christ said to Pilate, 'You would have no power over me if it had not been given you from above.'⁵⁵ None of these passages mentioned kings as such, but taken together, and understood in a *milieu* in which kingship was the current form of government, they provided a mental context for perceiving royal power as being derived from God's goodwill or favour. The Old Testament also provided ample evidence for the divine source of the power of the kings of Israel, beginning with the account of Samuel's anointing of Saul. The identification of the people of the Franks with Israel in the Merovingian period encouraged the application of Old Testament imagery to Frankish kingship, an interpretation which was developed further under the Carolingians. Yet the Old Testament was ambivalent about kingship. Samuel was reluctant to institute the monarchy and pointed out the disadvantages of having a king (1 Samuel 8:6-18), and the wickedness of Israel in wanting one, since its only true king was Yahweh (1 Samuel 12:12-20). Similarly Hosea 8:4 declares, 'They have set up kings, but not with my consent, and appointed princes, but without my knowledge.'⁵⁶ These reservations were, however, generally ignored in the spread of divine grace monarchy and only resurfaced infrequently in medieval discussions of the role of kings.

The implications of this theocratic form of kingship were profound for the relationship between ruler and ruled. The king was understood to derive his authority directly from God: he was God's vicegerent on earth, and was as such often described as his vicar (*vicarius dei*). The people he ruled were not considered to be the source of his power, but were instead thought to have been

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